terminals or other outside plant structures. There is no need for additional rules in this area.

I. Collocation at Remote Incumbent LEC Premises

In the *Second Further Notice*, the Commission sought comment on whether and to what extent it should modify its collocation rules to facilitate subloop unbundling.[26] Specifically, the Commission sought comment on the technical and security concerns and requirements associated with remote collocation.[27] Qwest supports collocation at remote incumbent LEC premises, and believes that remote collocation should provide access to subloops at workable interconnection points.

As an incumbent, Qwest offers several different products to accommodate the CLECs' desire for remote collocation at structures that house Qwest network facilities on public rights-of-way and all land owned, leased, or otherwise controlled by Qwest, such as controlled environmental vaults, controlled environmental huts, cabinets and other remote terminals.

The first product is Joint Planned Space-Remote Collocation ("JPS"). This product is available where space is not available, and Qwest is planning to build facilities to accommodate a DSLAM for provision of its own services. JPS offers DSLAM space in a remote cabinet on a shelf level as Qwest deploys new xDSL remote terminal cabinets. After seeking input from CLECs, Qwest will construct the amount of space requested by the CLEC simultaneously with the Qwest

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[26] *Second Further Notice* at ¶ 104.

[27] *Id.*

DSLAM build. The space can include access to AC/DC power, heat dissipation, and terminations to the Feeder Distribution Interface ("FDI").

The second remote collocation product is called Leased Existing Space-Remote Collocation ("LES"). This type of remote collocation occurs when space in cabinets and vaults facilities already exists to accommodate CLEC equipment. Space will be offered on a first-come, first-served basis at the full shelf level, and any equipment placed by a CLEC must meet the requirements of the remote site (e.g., space, power, heat, termination and heat dissipation requirements).

With both of these products, the CLEC will be responsible for all associated costs for physical cabinet space, terminations, FDI usage and/or modifications. The CLEC must meet the width and height requirements of the remote cabinet, and will be responsible for procuring and placing their equipment in the remote cabinet, as well as the maintenance of such equipment. With the JPS product, the CLEC must provide a forecast in order to accommodate requests for joint planned space, and must provide space, power and heat dissipation capabilities in order for Qwest to meet a request. With JPS, the CLEC will assume all costs for necessary "site" modifications needed to meet a remote collocation request (e.g., cabinet, FDI, feeder requirements, right-of-way, etc.).

With the exception of the field verification/quote preparation interval, which is 21 business days, all other intervals with these products are done on individual case basis.

Where facilities to accommodate remote collocation do not exist and Qwest is not planning on constructing them in the near term, Qwest also offers access to subloops through a product named Field Connection Point ("FCP"). The FCP allows the CLEC to bring its cable into any accessible terminal. Because of the varied environments and municipal regulation the actual implementation of the FCP may be varied, but the basic product provides a splice point in or near the accessible terminal, where the CLEC wishes to access subloops, by placing jumpers from the CLEC's terminations to Qwest terminated subloops. Upon request, Qwest Corporation will place a new splice terminal and terminate a cable stub from the splice terminal to the accessible terminal (although existing terminals may be used if there is space for the CLEC's cable and spare terminations are available.).

1. Disclosure of Information Concerning Remote Terminals

The Commission sought comment concerning whether incumbent LECs should be required to provide requesting carriers with demographic and other information regarding particular remote terminals similar to the information available regarding incumbent LEC central offices.[28] Qwest supports the disclosure of network information concerning *particular* remote terminal locations (e.g., distribution area boundaries, the number of living units within the distribution area). It would not be reasonable and would be overly burdensome, however, to require incumbent LECs to provide information on remote terminals on a

[28] *Second Further Notice* at ¶ 107.

generalized basis.[29] Furthermore, Qwest does not support the disclosure of customer proprietary network information as part of this disclosure.

2. Line Card Collocation

In the *Second Further Notice*, the Commission sought comment on whether it should require incumbent LECs to permit collocation of individual line cards in digital loop carriers located in incumbent LEC remote terminals.[30]

As is the case with line card collocation at the central office, Qwest does not presently support such card-at-a-time collocation at this point in time, and instead supports remote collocation at the shelf level. First, with shelf collocation, the CLEC has an equal opportunity to provide what the incumbent provides. Moreover, based upon current technology, a card cannot stand alone—it depends on the shelf for power, CPU, and other functions, and cannot perform a dedicated function. A copper pair is wired to the back plane in the shelf at the remote terminal, and the back plane assigns the particular call to particular line card in the shelf. Thus, cards work on a pooled basis, without any discrete functionality to a particular end user (similar to the "party line" concept of the past for voice lines). In short, a card would need the incumbent-LEC-provided shelf, electronics, and transport (since a single fiber lights up not only the card but the entire shelf).

There are also interoperability issues to be resolved before card-at-a-time collocation will be workable, since not all cards and shelves are presently compatible. Additionally, present-day OSS cannot support card-at-a-time

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[29] Qwest literally has hundreds of thousands of remote terminals..

collocation. While it does not seem likely that card-at-a-time collocation will prove feasible in the near term, if the technological issues are resolved, the Commission should stand ready to revisit card collocation, consistent with the Act and the changing marketplace.

3. Zoning and Rights-of-Way Issues

The Commission also sought comment on how, if at all, zoning, rights-of-way, and other property laws will affect an incumbent LEC's ability to install remote structures that are sufficiently large to accommodate potential collocators.[31] Specifically, the Commission invited comment on whether incumbent LECs' easements permit adjacent collocation of remote terminals, and whether local governments, electric power companies, and similar third parties will allow collocators to place their own controlled environmental huts, controlled environmental vaults, cabinets, and other structures at remote locations, including on public rights of way.[32] Finally, the Commission noted that in the *UNE Remand Order*, it found that a competitive LEC should be responsible for resolving any obstacles that it encounters from municipalities or electric utilities in seeking to obtain unbundled access to an incumbent's subloop elements, and inquired whether CLECs should be responsible for resolving similar problems in connection with collocation at remote incumbent LEC premises.[33]

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[30] *Second Further Notice* at ¶ 109.

[31] *Second Further Notice* at ¶ 111.

[32] *Id.*

[33] *Id.*

Qwest's easements and other licenses are typically broad enough to allo CLECs to collocate within existing cabinets and other structures. However, the concern implied in the *Second Further Notice* that zoning and other property laws may make it more difficult for incumbent to install new structures that are "sufficiently large" to accommodate remote collocation of CLECs is a valid one. Obviously, the larger the proposed cabinet or other structure, the less likely it is that municipalities and other third parties will permit incumbents to place such structures in residential neighborhoods.

Finally, Qwest lacks the authority to extend its easements or licenses to permit a CLEC to place a CLEC-owned cabinet or other structure in such locations. Consistent with the Commission's conclusion in the *UNE Remand Order*, the CLECs should be responsible for resolving such issues directly with the municipality or other third party involved.[34]

4. Virtual Collocation in Remote Locations

In the *Second Further Notice*, the Commission sought comment on whether virtual collocation constitutes an acceptable substitute for physical collocation in remote locations.[35] Virtual collocation is not an acceptable substitute for physical collocation in remote locations because the same constraints that would limit the availability of remote physical collocation would similarly constrain any such

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[34] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, CC Docket No. 96-98, 15 FCC Rcd 3696, 3792, ¶ 270 (1999) ("*UNE Remand Order*").

[35] *Second Further Notice* at ¶ 112.

virtual collocation in remote premises. Indeed, in some ways collocation at a remote terminal is already akin to virtual collocation in a central office. In a central office where space is not sufficient to allow for a separate physical collocation, Qwest offers virtual collocation whereby Qwest places CLEC equipment in a shelf in the Qwest line-up. In a remote physical collocation scenario, the CLEC is similarly placing its equipment in a shelf. Where space is not sufficient to allow a CLEC to occupy an entire shelf in a remote terminal, then space is not sufficient for a virtual remote collocation as well. Qwest also submits that incumbent LECs should not be required to maintain CLEC equipment in a remote terminal when the CLEC has been given direct access. Finally, as indicated above, card-at-a-time remote collocation is not presently a workable solution.

J. Provisioning Intervals

The Commission also sought comment on provisioning intervals, including whether it should specify an overall maximum collocation provisioning interval shorter than 90 calendar days or shorter intervals for particular types of collocation arrangements; possible maximum intervals for and the steps required to provision caged, cageless, shared, and adjacent collocation arrangements, modifications to existing collocation arrangements, collocation within remote incumbent LEC premises, and collocation involving conditioned and unconditioned space.[36]

The Commission has already established a default provisioning interval of ninety days, which applies when a state commission has not set forth its own

[36] *Second Further Notice* at ¶ 115.

intervals. Thus, the interval set by the Commission does not deal with the complicated issues addressed in this notice, nor does it speak to other critical interval issues such as forecasting. Qwest submits that delegation of these issues to the states, subject to the federal default backdrop, is appropriate, and no new rules need to be adopted in this docket unless the Commission chooses to become more actively involved the actual intervals used in each state. In that case, specific rules to address each aspect of provisioning intervals will be necessary Qwest's position on several critical issues, including forecasting, reconditioning of space, and adjacent space, are addresses in Qwest's Petition for Clarification Or, In the Alternative, Reconsideration, which is attached.

K. Space Reservation Policies

In the *Second Further Notice*, the Commission also sought comment on whether it should adopt a national space reservation policy that would apply where a state has not set its own standard, and, to the extent that a national standard is warranted, what standards would be appropriate standards for varying types of equipment.[37]

Qwest believes that a central office space reservation system would be beneficial only if a binding forecast and the payment of 50% down is connected with a reservation. If no binding forecast is required, then, the first-come, first-served policy should remain in place. Finally, with technology advancing at an accelerated rate in developing multi-functional equipment, it would be difficult to administer a

[37] *Second Further Notice* at ¶ 117.

standard template for permissible collocation equipment that meets network and businesses strategies for all CLECs.

III. COMMENTS ON FIFTH FURTHER NOTICE OF PROPOSED RULEMAKING IN CC DOCKET NO. 96-98

A. Loops and Interoffice Transport

In the *Fifth Further Notice*, the Commission sought comment whether an individual optical wavelength generated by dense wavelength division multiplexing ("DWDM") equipment is itself a loop or is rather a feature, function, or capability of the fiber loop, and whether there are any proprietary concerns related to accessing an optical wavelength of the loop.[38]

Qwest believes that the loop is properly defined as the physical transmission path between Qwest central offices and the customer premises. DWDM systems[39] create optical wavelengths with a single fiber and not a specific bandwidth, since the bandwidth to be used with this wavelength is dependent on the technology being used. Because the bandwidth is determined by the attached equipment, Qwest believes that the DWDM should be treated as additional capability of the loop, and not as additional capacity of the loop.

DWDM technology is relatively new, highly proprietary, and current technical standards do not yet address this technology. Moreover, the Network Management Systems ("NMS") built for these systems do not currently support

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[38] *Fifth Further Notice* at ¶ 120-21.

[39] Dense Wave Division Multiplexing ("DWDM") is rarely used in the Qwest Local Network. Where it is used, the DWDM system is placed on the protect channel and not the working channel of the optical system.

multiple carrier access. Accordingly, it is not currently possible or technically feasible to partition the NMS for multiple service providers.

The Commission also sought similar comment concerning unbundled dedicated transport.[40] Qwest does not believe that unbundled dedicated transport should be considered to be part of the loop. Unbundled dedicated transport is simply the provision of bandwidth between two offices. This bandwidth could be carried over different technologies (e.g., fiber or radio). Such services are provided through standard based interfaces, and the telecommunications industry has been providing bandwidth to end-users for quite some time.

B. Subloops

In the *Fifth Further Notice*, the Commission sought comment generally on whether the deployment of new network architectures necessitates any modification to or clarification of the Commission's rules concerning subloops, as well as those pertaining to line sharing.[41] The Commission also sought comment on what features, functions, and capabilities of the subloop are created by the deployment of fiber feeder and NGDLC systems, and whether accessing the features, functions, and capabilities of subloops consisting of fiber facilities includes access to all technically feasible transmission speeds and quality of service ("QoS") classes such as Constant Bit Rate ("CBR") and real time and non-real time Variable Bit Rate

[40] *Fifth Further Notice* at ¶ 121.

[41] *Id.* at ¶ 123.

("VBR") that exist in the attached electronics.[42] The Commission also sought comment on whether the provision of multiple CBR and or VBR channels, circuits, paths, or connections over the same fiber feeder facility would cause interference or congestion that could lead to service degradation.[43]

The NGDLC systems that are being deployed by Qwest consist of the equipment and features, functions and capabilities that drive certain services to the end user. These features, functions and capabilities are equipment-driven and the loop has no technical impacts on them. Furthermore, the NGDLC systems would be deployed where fiber exists or fiber is planned for the subloop. These NGDLC systems are capable of delivering services such as xDSL and functions such as Constant Bit Rate (CBR) and Variable Bit Rate (VBR). By contrast, the Quality of Service (QoS) classes are offered through the ATM network that is installed in the Central Office.

The provisioning of an end-to-end service with a particular transmission speed is a function of and involves multiple pieces of equipment. This equipment would include: the modem in the customer premise; the remote DSLAM; the ATM switch; and the type of equipment the ISP is connecting to the ATM switch. Thus, the fiber subloop, by itself, does have the technical capability for the service provider to offer any of the services or functionalities mentioned earlier—as determined by the particular equipment attached to the subloop. Thus, CLECs obtaining access to the subloop will have access to all the features, functions, and

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[42] *Fifth Further Notice* at ¶ 125.

capabilities of the subloop. Where the capacity of the subloop is limited and insufficient to accommodate all service providers, capacity should be allocated on a first come first served basis.

Qwest notes, however, that bandwidth is a finite element. Where multiple service providers use this bandwidth to provision different services, and where those services require a constant and defined transmission speed, service could be degraded for all providers. Thus, planning and traffic engineering must be employed by everyone, even in a CBR environment.

VBR presents a greater challenge. In a VBR environment, this bandwidth is offered to all users and a contention mechanism is put in place. If all users are contending for this finite bandwidth, congestion will occur. This is dependent on the transmission speed being generated by the end users, with higher speeds creating more congestion. Qwest believes that the ADSL Forum should be the place where a policing and traffic engineering policy is developed and agreed to by the manufacturers and service providers. This process is equivalent to the charter of the Frame Relay and the ATM Forums.

With respect to the Commission's query concerning the ability of a CLEC to install multiplexing equipment in the remote terminal and central office for purposes of accessing the subloop,[44] Qwest notes that as long as space, power, and HVAC are not an issue in the remote terminal and the Central Office, any CLEC can install multiplexing equipment at both ends of the fiber to gain access to the

[43] *Id.* at ¶ 125.

subloop. Similarly, the CLEC can acquire a right-of-way in close proximity of Qwest's remote terminal and install its multiplexing in its own cabinet in order to access the fiber subloop.

In cases where all of the fiber capacity is dedicated to the equipment in the remote terminal, the CLEC can order finished services such as OC-3. If no fiber and/or bandwidth capacity exists in the remote terminal, the CLEC and the incumbent LEC are in the same position and joint planning to increase that capacity becomes critical.

With respect to the Commission's query whether there are any proprietary concerns related to accessing the subloop at the remote terminal,[45] Qwest notes that dark fiber access at the remote terminal does not present any proprietary concerns because no equipment is attached to it. If the CLEC requires access to the incumbent LEC DSLAM, partitioning of the equipment is not technically possible. This case would present proprietary concerns.

The Commission sought comment on what (if any) obligations should be imposed on incumbent LECs to increase the capacity of the subloop to accommodate carriers' requests for access to the subloop.[46] Qwest believes that with joint planning between the incumbent LECs and CLECs, such situations should be rare.

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[44] *Fifth Further Notice* at ¶ 126.

[45] *Id.* at ¶ 126.

[46] *Id.* at ¶ 127.

C. Spare Copper

The Commission also sought comment on the obligations of incumbent LECs with respect to copper facilities, when the incumbent LEC overlays those facilities with fiber and installs NGDLC equipment in remote terminals, and what processes the incumbents have in place for determining whether to retire unused loop facilities.[47]

Qwest's processes with respect to retirement or abandonment of copper facilities differ depending on whether the copper facilities in question are buried or underground. In the case of a buried facility (i.e., not in a conduit), a cable may be abandoned in place when a fiber facility assumes the load. In many cases however, the feeder facility may be converted to distribution or be pressed into service closer to the central office and is not retired at the time of placing fiber feeder facilities. Underground copper facilities are frequently removed to vacate ducts in congested conduit runs to make room for fiber placements. If duct space is available, existing copper facilities may be, and usually are, left untouched, and the fiber feeder is used in addition to the existing copper feed. In neither instance can it be assumed that a fiber placement automatically means the retirement of the existing copper facility. Each case must be looked at on an individual case basis before a determination can be made as to retirement or abandonment of copper facilities. No change is anticipated in this process.

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[47] *Fifth Further Notice* at ¶ 129.

With respect to notice to competitors of retirement of copper facilities, Qwest notes that in most cases, copper facilities are retired because the plant has reached the end of its lifespan (e.g., lead sheathed copper). Indeed, the placement of fiber only rarely accelerates the retirement of copper facilities. In either instance, CLECs would be notified of major changes in the network as per provisions within the interconnection contracts. In no instance will existing services or products being purchased by the CLEC be jeopardized by the change in technology. Mass notification of copper retirements to the CLEC community would seem to be unnecessary at this juncture.

Finally, the Commission inquired whether there should be a state or federal approval process before incumbent LECs are permitted to retire and remove loop plant, and whether there are otherwise implications under the Act or the Commission's rules concerning the sale of such retired loop plant by the incumbent to another entity.[48]

Qwest does not support the concept of state or federal approval for the retirement of obsolete loop plant, and there is no support in the Act for this concept. Although, section 214 of the Act prohibits a carrier from discontinuing, reducing, or impairing service to a community without Commission approval,[49] section 214 cannot be read to require Commission approval where the loop plant itself has simply been altered and upgraded, but the service to the end user remains in place. Indeed, section 214 specifically indicates that "nothing in this section shall be

[48] *Second Further Notice* at ¶ 131.

construed to require a certificate or other authorization from the Commission for any installation, replacement, or other changes in plant, operation, or equipment . . . which will not impair the adequacy or quality of service provided."[50] Nothing in the Act suggests that when an incumbent upgrades its copper loops to fiber, that the retirement of the copper facilities requires Commission approval under section 214 or any other provision of the Act.

D. Cross Connection

In the *Fifth Further Notice*, the Commission sought comment on various aspects of remote terminals and subloops.[51] Qwest believes that it is technically feasible for carriers to access the subloop by collocating at the remote terminal, and that the Commission should require incumbent LECs to allow carriers access to the subloop at the remote terminal. Qwest Corporation (i.e., the Qwest incumbent LEC) has already begun to ensure that with any greenfield build that remote terminals will have a technically feasible access point.

In response to the Commission's query whether there are any circumstances under which a special construction arrangement, including a cable splice, is necessary to access a subloop,[52] Qwest notes that Qwest Corporation facilitates access to subloops through a product named Field Connection Point ("FCP"). The FCP allows the CLEC to bring its cable into any accessible terminal. Because of the

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[49] 47 U.S.C. § 214(a).

[50] *Id.*

[51] *Fifth Further Notice* at ¶ 133.

[52] *Id.* at ¶ 133.

varied environments and municipal regulations the actual implementation of the FCP may be varied, but the basic product provides a splice point in or near the accessible terminal which the CLEC wishes to access subloops, by placing jumpers from the CLECs terminations to Qwest terminated subloops. Upon request, Qwest Corporation will place a new splice terminal and terminate a cable stub from the splice terminal to the accessible terminal (although existing terminals may be used if there is space for the CLECs cable and spare terminations are available).

Such special construction arrangements should be priced to allow the incumbent to recover its cost for engineering, labor, material, security, and any private rights-of-way (if needed and available).

Qwest does not believe that there are presently means other than special construction arrangements (i.e., on an individual case basis), that would enable competing carriers to obtain access to the subloop at all the possible remote terminals when the copper pairs are hardwired at the remote terminal.

IV. THE COMMISSION MUST RECOGNIZE THAT PRIVATE PROPERTY RIGHTS REMAIN OF CRITICAL IMPORTANCE.

Prior to the merger, the pre-merger U S WEST argued at length about the dangers inherent in the Federal Government taking too aggressive a posture regarding the use and expropriation of the private property of incumbent LECs. The essential position was that the Commission must tread cautiously when seizing private property, even property of a carrier, because such seizures have constitutional implications far more consequential than most regulatory actions which this Commission undertakes. In the *Collocation Order*, the Commission

seems to have misapprehended our point to some degree, focusing instead on whether its collocation actions constituted unconstitutional property takings.[53] Because the point is important, we briefly restate the role of takings jurisprudence in developing a coherent collocation strategy. By a coherent strategy, we mean one which not only furthers the goals of the Act and is consistent with the language of the Act itself, but one which has a reasonable chance of surviving judicial review and, perhaps most significantly, does not expose the federal treasury to being tapped as a subsidy source for those using incumbent LEC collocation space.

Some basic principles are no longer in doubt.

- When the federal government requires that an incumbent LEC grant physical collocation rights to a CLEC, a physical taking of the incumbent LEC's property has taken place.[54] This is neither good, bad nor indifferent. It is a simple legal reality. A quick visit to the collocation spaces currently located on incumbent LEC premises brings home dramatically the fact that the government has essentially seized this incumbent LEC property and dedicated it to the occupation and use of CLECs.
- Section 251(c)(6) of the Act expressly authorizes the Commission to require that an incumbent LEC make physical collocation available. Thus, to the extent that physical collocation is ordered consistent with the terms of Section 251(c)(6) of the Act, the Commission's actions do not constitute an unauthorized taking of

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[53] *Collocation Order* at ¶¶ 67-69.

[54] *See, e.g., Bell Atlantic Telephone Companies v. FCC*, 24 F.3d 1441, 1445 (D.C. Cir. 1994).

private property for public use. Instead, the Commission's collocation rules must be targeted to constitute an authorized taking of incumbent LEC property.

- Obviously, when a federal agency exercises delegated takings authority, it must be careful to limit its actions to those expressly authorized in its enabling statute. Here the Commission is constrained to order physical collocation only for "equipment necessary for interconnection or access to unbundled network elements at the premises of the local exchange carrier. . ."[55] As is discussed below, this limitation on the Commission's takings power under the Act ought not to stand in the way of development of a rational and successful collocation policy. However, the Commission must be aware that it will not be granted the same Chevron deference in adopting overly inclusive collocation rules as it would be granted in the case of most other regulatory actions.[56]
- Finally, it must be remembered that a physical taking of private property must be accompanied by payment of just compensation. The *Collocation Order* seemed to characterize Qwest's position as arguing that the *Collocation Order* itself was unconstitutional because it did not provide for just compensation. Finding that Qwest had not documented that it would not be justly compensated for collocation provided to CLECs, the Commission concluded that "U S WEST has failed to show that our collocation rules effect an unconstitutional taking under the fifth amendment."[57] But this is not, in Qwest's opinion, the relevant

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[55] 47 U.S.C. § 251(c)(6).

[56] *See Bell Atlantic v. FCC*, 24 F.3d at 1445-46.

[57] *Collocation Order* at ¶ 69.

inquiry. The law is quite clear that, should the Commission's rules require or permit a CLEC to obtain physical collocation from an incumbent LEC at a price which is not compensatory, the difference between a constitutionally adequate price and the price paid by the CLEC must be made up by the Federal Treasury.[58] This Commission has never undertaken an inquiry to determine the relationship between the amount its rules or the Act set for property dedicated to CLECs under the collocation rules and a constitutionally adequate compensation for taken property. Obviously the Commission is of the opinion, which seems to be generally shared, that no such inquiry need be undertaken. But the Commission is not required to examine the amount which would be required for just compensation for property taken for collocation only because the Federal Government is required as a matter of law to make good the difference between the amount which the Commission sets and the constitutionally adequate amount. If the Commission disagrees with this analysis, serious additional thought must be given to the issue of takings and just compensation in the context of collocation.[59] If the Commission agrees with the analysis, it still must be cognizant that every price below value which it gives to a CLEC in setting the price for collocation space is a one-for-one subsidy financed by taxpayers.

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[58] *See, e.g., Blanchette v. Connecticut General Insurance Corps.*, 419 U.S. 102, 126-27, 148-49 (1974).

[59] In all events, the Commission should state on the record whether it believes that its rules provide for or permit just compensation for taken property, and

Respectfully submitted,

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October 12, 2000

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whether it believes that incumbent LECs have a cause of action against the Commission for any just compensation shortfall.

ATTACHMENT

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matters of	)	
	)	
Deployment of Wireline Services Offering Advanced Telecommunications Capability	)	CC Docket No. 98-147
	)	
and	)	
	)	
Implementation of the Local Competition Provisions of the Telecommunications Act of 1996	)	CC Docket No. 96-98

PETITION OF QWEST CORPORATION FOR CLARIFICATION OR, IN THE ALTERNATIVE, RECONSIDERATION

Qwest Corporation ("Qwest") respectfully requests clarification of the Commission's order establishing a default interval of 90 days for incumbent LECs' provisioning of collocation space.[1] Qwest does not object to the Commission's imposition of a default national rule, provided mechanisms exist to take account of certain context-specific issues that may make provisioning collocation space within the default interval impossible. The *Order* generally appears to recognize the need for such mechanisms, as it makes the default rule applicable only where alternative intervals have not been established through the statutory negotiation and arbitration processes.

But the Commission's discussion of the interplay between its default rule and incumbent LECs' statements of generally available terms and conditions ("SGATs") is subject to varying

[1] *See Deployment of Wireline Services Offering Advanced Telecommunications Capability* and *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Order on Reconsideration and Second Further Notice of Proposed Rulemaking in CC Docket No. 98-147 and Fifth Further Notice of Proposed Rulemaking in CC Docket No, 96-98, FCC 00-297, CC Docket Nos. 98-147 and 96-98 (rel. Aug. 10, 2000) ("*Order* or *Collocation Provisioning Order*").

interpretations.[2] The Commission should clarify that, where an incumbent LEC files an amendment to its SGAT that proposes a provisioning interval longer than 90 days, and the relevant state commission permits the amended SGAT to take effect by refraining from taking action within the statutory deadline,[3] the incumbent's proposed interval — rather than the Commission's default rule — will apply unless and until the state commission rules otherwise. Qwest submits that this interpretation is the most reasonable reading of paragraph 36 of the *Order*.

If the Commission instead intended that the *Order* require compliance with the 90-day default rule *notwithstanding* a state commission's effective approval (by operation of law) of an amended SGAT, Qwest respectfully requests reconsideration of that decision. Requiring compliance with the federal default rule in lieu of the interval specified in the SGAT would be inconsistent with section 252 of the Act. Moreover, the Commission's apparent assumption that 90 days is nearly always a reasonable period for provisioning collocation space appears to be founded in large part on an incorrect understanding of Qwest's own provisioning policy. Far from agreeing invariably to provision cageless collocation space within 90 days,[4] Qwest has made clear to requesting carriers and state commissions that, absent adequate forecasts of the demand for collocation space, Qwest *cannot* provision space within 90 days in many circumstances. As the attached declaration of Georganne Weidenbach demonstrates, where demand forecasts are inadequate, or where a CLEC request necessitates substantial reconditioning or adjacent collocation, a 90-day maximum provisioning interval is unreasonable.

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[2] *See id.* ¶ 36.

[3] *See* 47 U.S.C. § 252(f)(3)(B).

[4] *See Collocation Provisioning Order* ¶ 27 (stating that Qwest has "committed itself" to provisioning cageless collocation space within 90 days).

Qwest wishes to emphasize that it does not seek to establish that an incumbent LEC may delay the provisioning of collocation space for no good reason. Qwest is not only a seller of collocation space, but a major purchaser as well. Qwest agrees that it is appropriate for the Commission to adopt rules that encourage incumbents to satisfy collocation requests on a timely basis. Qwest is filing this petition because the Commission's rules could be read to create a situation where mandatory collocation intervals simply cannot be met. As a general principle, allowing 90 days for collocation provisioning is a reasonable and attainable goal, assuming proper forecasting of demand. But if forecasting is not provided, or is not accurate, incumbent LECs will not be able to plan their own floor-space needs and those of CLECs, making 90 days an unreasonable standard. In addition, when an incumbent must construct or condition space to satisfy a collocation request, the provisioning process often will take more than 90 days, regardless of whether forecasting has been provided. This petition seeks to establish a regulatory structure in which these circumstances can be properly addressed. It does not seek a retrenchment of the Commission's collocation commitment or rules.

BACKGROUND

In its *Local Competition Order*[5] and *Advanced Services First Report and Order*,[6] the Commission imposed a series of stringent collocation requirements on incumbent LECs. On reconsideration, in response to petitions asserting that additional requirements were necessary to promote vigorous competition, the Commission adopted the default 90-day provisioning rule,

[5] *See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, 11 FCC Rcd 15499 (1996).

[6] *See Deployment of Wireline Services Offering Advanced Telecommunications Capability*, First Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 4761 (1999).